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Via electronic mail

Brian Sierant

Water Quality Division

Texas Commission on Environmental Quality

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brian.sierant@tceq.texas.gov

RE: Frederick, Perales, Allmon, & Rockwell Comments on Potential Rulemaking Regarding Sludge Classification Under Chapter 312

On behalf of Frederick, Perales, Allmon & Rockwell, P.C. (FPAR), I submit the following comments regarding the potential rulemaking regarding Chapter 312 under consideration by the TCEQ. FPAR appreciates the opportunity to provide these comments.

FPAR supports clarifying that grease and grit trap waste is not to be allowed to be land applied as Class B sludge after mixing with domestic sludge. Grease and grit trap wastes contain contaminants of a different nature than that contained in domestic sludge, and plants on a field do not address such contaminants in the same fashion as other contaminants, such as nutrients. The allowance of material to be treated as Class B Sludge, despite whatever other material is included within the sludge, creates the potential for any number of types of deleterious wastes to be disposed of at a sludge site which poses a hazard to public health and the environment.

FPAR opposes any effort to revise 312.11(c)(1)(B)(i), limiting the landowners included based on the boundaries of the application fields, rather than the boundaries of the property. Such an approach would be inconsistent with approaches taken elsewhere. For example, for water quality permits, the adjacent landowners must include everyone owning property adjacent to the property owned by the applicant, regardless of the distance to the treatment plant itself. Furthermore, the revision of 312.11(c)(1)(B)(i) would have the potential to create confusion as to how it relates to the more general application requirements of 305.45(a)(6), to which 312.11(c)(1) refers. According to 305.45(a)(6), the application must include a map depicting the ownership of tracts of land adjacent to the facility, among other items. If TCEQ provides a narrower scope of persons to be included in 312.11(c)(1)(B)(i), then there could be confusion as to which provision overrides, and whether all adjacent landowners must be included within the map. Sludge permits are issued under Chapter 361 of the Texas Health and Safety Code, similar to landfills. Sludge permits address the disposal of waste similar to landfills. The map for a

landfill must include all persons within ¼ of a mile of the facility boundary, rather than the waste footprint. That is because all activities on site can have an impact on nearby landowners. This is true of a landfill, and equally true for a sludge application site. For the sake of consistency, and in consideration of the full range of impactful activities at a sludge application site, the current requirement in 312.11(c)(1)(B)(i) should be kept as is, to ensure that mailed notice is provided to all persons within ¼ mile of the facility boundary.

FPAR also believes that the Chapter 312 Rules should be modified to prohibit the application of sludge within the 100-year floodplain. Floodwaters have a tendency to pick up applied material, especially soon after application, and buffer zones are ineffective when they are inundated with floodwaters. Recent events such as Hurricane Harvey demonstrate the hazards that can be created by a failure to inadequately plan for the potential for flooding in an area. Prohibiting the application of sludge in the 100-year floodplain also reduces the likelihood that sludge will be applied to saturated areas. Considering the numerous water bodies in the state that are impaired for bacteria, it is best to take an approach that will protect against further impairment.

FPAR believes that the terminology utilized in the TCEQ rules should track the terminology used in the governing statutes and EPA regulations. The Texas statutes governing the application of Class B sludge utilize the term “sludge”, and EPA regulations governing the application of Class B Sludge utilize the term “sludge”. The material remains sludge even if it has been treated. By statute, Class B sludge is “sludge”, not the euphemistic term “biosolids”. The use of separate terms in regulations from those utilized in statute creates the potential for a divergence in the applicable requirements. Thus, TCEQ opposes the substitution of the term “biosolids” for the term “sludge” in the rules.

FPAR further takes the position that buffer distances should be reconsidered upon renewal or amendment of a sludge permit. A residence constructed after initial issuance of a permit warrants equal protection from potential health impacts as a residence constructed prior to initial issuance of a permit. In fact, the 33-foot buffer zone for the application of sewage sludge from a surface water body is an insufficient distance. Vegetated buffers are of little impact when flooded, and a distance of 33 feet creates the potential that during a rain event the application fields will be very close or even beneath the floodwaters. Buffers are also most effective in trapping particulates, while less effective in preventing the movement of nutrients. Furthermore, the performance of buffers can depend on numerous factors including topographic and loading conditions. A narrow width of 33 feet does not account for this level of uncertainty in the performance of the buffer. Buffers can also have ancillary benefits, and these benefits should be considered as well.

With regard to facilities that process sewage sludge on-site, FPAR supports the requirement of a permit for those processing activities. This is analogous to Type V operating facilities as regulated under the MSW rules, and warrant equal scrutiny.

Sincerely,

/s/Eric Allmon
Eric Allmon

Brian Sierant

From: Eric Allmon <eallmon@lf-lawfirm.com>
Sent: Tuesday, December 19, 2017 2:12 PM
To: Brian Sierant
Subject: Re: Chapter 312 Stakeholder Draft

Mr. Sierant,

I wanted to note that Texas Campaign for the Environment and Clean Water Action also now sign on to the comments regarding the 312 Rules that I submitted on Friday. Feel free to contact me if you have any questions, or if you need another copy indicating the sign-on of those parties.

Eric Allmon
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On Fri, Dec 15, 2017 at 5:09 PM, Eric Allmon <eallmon@lf-lawfirm.com> wrote:
Mr. Sierant,

Attached are comments from my firm with regard to the stakeholder process regarding the 312 rules. Please feel free to contact me if you have any questions.

Eric Allmon
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On Wed, Dec 13, 2017 at 11:49 AM, Brian Sierant <brian.sierant@tceq.texas.gov> wrote:

The draft rule revisions have not been conducted so far. The stakeholder meeting was a "kick off" meeting to discuss proposals of what we have come up with so far as why we plan to open the rules. Once the preliminary stakeholder comment period is over on December 15, 2017, we will then proceed with the rule making process. This will involve the official proposal in Commission Agenda, the official timeline, the drafting of the proposed rule, the public hearing and the official public comment period. Dates of this will be posted on our website in the future.

I will include you as a stakeholder for the upcoming rule rewrite. If you wish to provide comments based on our presentation / discussions that took place here on October 30th, you can still do so. If you need a little more time, that

would be ok. Or, you can submit formal comments during the official comment period based on the updated draft rule language.

Below is the link to the stakeholder meeting webcast:

http://www.texasadmin.com/tx/tceq/water_quality_advisory/20171030/

Brian Sierant

Biosolids Workleader

Land Application Team (MC 150)

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**TEXAS COMMISSION
ON ENVIRONMENTAL QUALITY**

From: Eric Allmon [mailto:eallmon@lf-lawfirm.com]

Sent: Tuesday, December 12, 2017 4:34 PM

To: Brian Sierant <brian.sierant@tceq.texas.gov>

Subject: Chapter 312 Stakeholder Draft

Mr. Sierant,

I occasionally work for Texas Campaign for the Environment, and I would be interested in reviewing the draft rule revisions for Chapter 312 that are out for stakeholder comment. Can you send me a copy of those, please?

Thanks,

Eric Allmon

Attorney

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